

## Social Security Administration

## § 408.1005

*Preponderance of the evidence* means such relevant evidence that as a whole shows that the existence of the fact to be proven is more likely than not.

*Remand* means to return a case for further review.

*SVB*, for purposes of this subpart, includes qualification for SVB, entitlement to SVB and payments of SVB.

*Vacate* means to set aside a previous action.

*Waive* means to give up a right knowingly and voluntarily.

*We, us, or our* refers to the Social Security Administration.

*You or your* refers to any person claiming or receiving SVB.

[69 FR 25955, May 10, 2004, as amended at 73 FR 76944, Dec. 18, 2008]

### § 408.1002 What is an initial determination?

Initial determinations are the determinations we make that are subject to administrative and judicial review. The initial determination will state the important facts and give the reasons for our conclusions. We will base our initial determination on the preponderance of the evidence.

[69 FR 25955, May 10, 2004, as amended at 73 FR 76944, Dec. 18, 2008]

### § 408.1003 Which administrative actions are initial determinations?

Initial determinations regarding SVB include, but are not limited to, determinations about—

- (a) Whether you qualify for SVB;
- (b) Whether you are entitled to receive SVB payments on the basis of your residence outside the United States;
- (c) The amount of your SVB payments;
- (d) Suspension or reduction of your SVB payments;
- (e) Termination of your SVB entitlement;
- (f) Whether an overpayment of benefits must be repaid to us;
- (g) Whether payments will be made, on your behalf, to a representative payee, unless you are legally incompetent;
- (h) Who will act as your payee if we determine that representative payment will be made;

(i) A claim for benefits under § 408.351 based on alleged misinformation; and

(j) Our calculation of the amount of change in your federally administered State recognition payment amount (*i.e.*, a reduction, suspension, or termination) which results from a mass change as defined in § 408.1001.

[69 FR 25955, May 10, 2004; 69 FR 45586, July 30, 2004]

### § 408.1004 Which administrative actions are not initial determinations?

Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by this subpart and they are not subject to judicial review. These actions include, but are not limited to, an action about—

- (a) Denial of a request to be made your representative payee;
- (b) Denial of your request to use the expedited appeals process;
- (c) Denial of your request to reopen a determination or a decision;
- (d) Disqualifying or suspending a person from acting as your representative in a proceeding before us;
- (e) Denial of your request to extend the time period for requesting review of a determination or a decision;
- (f) Denial of your request to readjudicate your claim and apply an Acquiescence Ruling;
- (g) Declining under § 408.351(f) to make a determination on a claim for benefits based on alleged misinformation because one or more of the conditions specified in § 408.351(f) are not met;
- (h) Findings on whether we can collect an overpayment by using the Federal income tax refund offset procedure. (See § 408.943).
- (i) The determination to reduce, suspend, or terminate your federally administered State recognition payments due to a State-initiated mass change, as defined in § 408.1001, in the levels of such payments, except as provided in § 408.1003(h).

### § 408.1005 Will we mail you a notice of the initial determination?

(a) We will mail a written notice of the initial determination to you at your last known address. Generally, we